IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.318 of 2005.

Date of decision: 30.5.2007

State of H.P. and others ....Petitioners

-Versus-

Smt.Lalita Tegta ….Respondent

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No

For the Petitioners: Mr.J.S.Guleria, Law Officer.

For Respondent: Mr.Ajay Mohan Goel, Advocate.

Deepak Gupta, J.(Oral)

The respondent herein was working as JBT teacher in Government Primary School Bachuna. A Charge-sheet was served upon her under Rule 14 of the CCS (CCA) Rules vide memo dated 3-2-2000. The charges which were levelled against the respondent were as follows:

> "ARTICLE-I
>
> That the said Smt.Lalita Devi, JBT, GPS Bachuna has not received her pay since 7/99, disobeyed the orders of her superiors, doing unnecessary correspondence with her superiors, issuing a show cause notice to BPEO instead replying to the show cause notice issued by the BPEO, not attending the GPS Bachuna in time and closing it before time and threatening her superiors. Thus by showing

disobedience to the orders of her superiors and carelessness towards her duties, the teacher has contravened the provisions of Rule 3(1)(i), (ii) of CCS (Conduct) Rules, 1964.

ARTICLE-II

That the said Smt.Lalita Devi, JBT, GPS Bachuna has disobeyed the orders of her superiors and doing unnecessary correspondence with her superiors as shown in above article. Smt.Lalita Devi, JBT has violated the provisions of Rule 3(1)(i), (ii) of CCS (Conduct) Rules, 1964 by way of ineligibility, adamant attitude and not obeying the assigned duties, rules and the orders issued from time to time."

An Inquiry Officer was appointed and the inquiry was conducted. The Inquiry Officer submitted his inquiry report and in this inquiry report Charge No.2 as stated by the Inquiry Officer is as follows:

"Charge No.2: The willful absence from G.P.S. (Girls) Rohru w.e.f. 23.10.2000 (AN) to 5.9.2001 (10 months 13 ½ days) and giving unrequired/unauthorized attendance in B.P.E.O. office Rohru for this period…."

The Inquiry Officer gave his findings on this charge in the following terms:

"1.Smt.Lalita Tegta JBT G.P.S. (Girls) Rohroo left the instruction on 23.10.2000 in the F.N. for her personal work in the office of the B.P.E.O. Rohroo and not for any official/school assignment and remained in that office regularly upto 5.9.2001 (AN) for complete 10 months and 12 ½ days at her own whims and without any official orders.

Therefore, this period is the period of willful absence from the duties and tantamounts to breach of discipline,

> insubordination and misconduct. However, she joined her duties w.e.f. 6.9.2001 in pursuance of B.P.E.O. order (P-14) which gives some safety against the degree of insubordination. But the period of willful absence for 10 months 13 ½ days is to be considered the period of willful absence, notwithstanding, her marking presence in the office of the B.P.E.O. Rohroo on some visiting register or Mehondli Pry. School register."

It is clear from the perusal of the aforesaid extracted portions of the Inquiry Report that the Inquiry Officer held the respondent guilty of indiscipline and insubordination on account of her having remained absence without leave for a period of 10 months and 13 ½ days. This was not the original charge framed against her. The disciplinary authority on the basis of the charge, ordered termination of the services of the respondent. The respondent challenged the said order before the Tribunal and the Tribunal came to the conclusion that no specific answer had been given by the Inquiry Officer to the original imputation of charges and as such the Inquiry officer has totally mis-directed himself and therefore the order was set-aside. The Tribunal held that the Rules of natural justice had been violated inasmuch as the respondent was not given an opportunity to defend the charge for which she was eventually found guilty.

We have heard Sh.J.S.Guleria, learned Law officer for the State and we find that there is no error in the order of the learned Tribunal. It is an undisputed fact that the respondent was found guilty only on account of having remained absence without leave for

the period mentioned hereinabove. This was not the charge which was levelled against her in the charge-sheet. She had not given any opportunity to defend herself with regard to this charge and therefore the learned Tribunal was absolutely right in holding that the order in question is perverse and violative of natural justice and fairplay. Hence, the writ petition is dismissed with no order as to costs.

We however want to make it clear that the orders passed against the respondent had been set-aside by the Tribunal on the ground that the charge for willful absence had not been levelled against her. In case the petitioner-State so desire they can start fresh proceedings under Rule 14 of the CCS (CCA) Rules in respect of this charge.

(Deepak Gupta),
Judge

May 24, 2007.
PV

(Surinder Singh),
Judge